

IN THE SUPREME COURT OF THE STATE OF NEVADA

LACY L. THOMAS,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND, THE HONORABLE  
MICHAEL VILLANI, DISTRICT  
JUDGE,

Respondents,

and

THE STATE OF NEVADA,  
Real Party in Interest.

No. 52351

**FILED**

NOV 05 2008  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus, or alternatively a writ of certiorari, challenges two orders of the district court: one denying petitioner Lacy Thomas' motion to disqualify the District Attorney's Office from prosecuting his case and the other denying Thomas' motion to continue an evidentiary hearing.

Thomas was indicted on five counts of theft and five counts of misconduct of a public officer. The accusations arose from five contracts that Thomas negotiated with five different entities. Thomas subsequently filed a motion in the district court to disqualify the District Attorney's Office from prosecuting his case. Thomas claimed that a conflict of interest existed because the District Attorney's Office represented him during the course of his employment as the Chief Executive Officer (CEO) of University Medical Center (UMC). The State filed a response, Thomas filed a reply, the district court conducted an evidentiary hearing, the

district court denied the motion, and Thomas filed the instant writ petition.

Mandamus and certiorari are extraordinary remedies, and the decision to entertain a petition for these writs lies within our discretion.<sup>1</sup> We may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station or to control a manifest abuse or arbitrary or capricious exercise of discretion.<sup>2</sup> And we may issue a writ of certiorari when an inferior tribunal has exceeded its jurisdiction.<sup>3</sup> However, we will not issue either writ if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.<sup>4</sup>

First, Thomas claims that “[t]he district court erroneously denied [his] motion to disqualify the Clark County District Attorney’s Office despite the fact that they are the same office which represented him during the scope of his employment as the CEO of UMC when the charges they are now prosecuting are directly related to official acts committed by [him] in that capacity.”

In Collier v. Legakes, we held that “[t]he disqualification of a prosecutor’s office rests with the sound discretion of the district court. In

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<sup>1</sup>Garcia v. Dist. Ct., 117 Nev. 697, 700, 30 P.3d 1110, 1112 (2001); Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

<sup>2</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

<sup>3</sup>NRS 34.020(2).

<sup>4</sup>See NRS 34.020(2); NRS 34.170; Garcia, 117 Nev. at 700, 30 P.3d at 1112; Hickey, 105 Nev. at 731, 782 P.2d at 1338.

exercising that discretion, the trial judge should consider all the facts and circumstances and determine whether the prosecutorial function could be carried out impartially and without breach of any privileged communication.”<sup>5</sup>

Here, the district court conducted an evidentiary hearing, found no evidence of an attorney-client relationship between the District Attorney’s Office and Thomas in his individual capacity, and exercised its discretion to deny Thomas’ motion to disqualify. Under these circumstances, Thomas has not demonstrated that the district court failed to perform a required act, exceeded its jurisdiction, or manifestly abused its discretion.

Second, Thomas claims that “[t]he district court erroneously denied [him] a full and complete evidentiary hearing to establish the conflict of interest when it denied him a brief extension to locate and obtain two critical witnesses necessary to the determination of the issue raised in his motion.”

The decision to grant or deny a motion for a continuance falls within the sound discretion of the district court.<sup>6</sup> However, “denying a reasonable continuance may be an abuse of discretion where the purpose of the motion is to procure important witnesses and the delay is not the particular fault of counsel or the parties.”<sup>7</sup>

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<sup>5</sup>98 Nev. 307, 309-10, 646 P.2d 1219, 1220 (1982) (internal citations omitted).

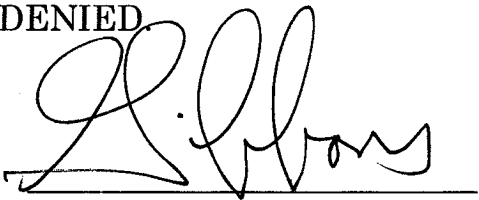
<sup>6</sup>Mulder v. State, 116 Nev. 1, 9, 992 P.2d 845, 850 (2000).

<sup>7</sup>Id. at 9-10, 992 P.2d at 850 (internal quotation marks and citation omitted).

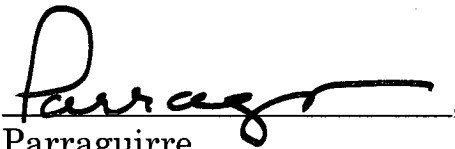
Here, the district court found that the evidentiary hearing had been continued four times, Thomas had ample time to locate and have in attendance his additional witnesses, and Thomas' proffer of the witnesses' expected testimony would have been insufficient to disqualify the District Attorney's Office. Under these circumstances, Thomas has not demonstrated that the district court failed to perform a required act, exceeded its jurisdiction, or manifestly abused its discretion.

Having considered Thomas' contentions and concluded that he is not entitled to extraordinary relief, we

ORDER the petition DENIED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michael Villani, District Judge  
Daniel J. Albregts, Ltd.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk